Assessing California's Ability to Comply with New Federal SCHIP Rules

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Harbage Consulting

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About the Authors
Harbage Consulting is a public-policy consulting firm based in Sacramento. The principal authors for this paper were Peter Harbage and Hilary Haycock.

About the Foundation
The California HealthCare Foundation, based in Oakland, is an independent philanthropy committed to improving California's health care delivery and financing systems. Formed in 1996, our goal is to ensure that all Californians have access to affordable, quality health care. For more information about CHCF, visit us online at www.chcf.org.

Introduction

On August 17, 2007, the U.S. Centers for Medicare and Medicaid Services (CMS) issued a letter to state health officials establishing new requirements to cover higher-income children in the State Children's Health Insurance Program (SCHIP) that would prevent the displacement of private coverage — a phenomenon known as "crowd-out." Under the directive, the new requirements must be fulfilled by states that offer SCHIP coverage to children in families earning above 250 percent of the Federal Poverty Level (FPL), now set at $42,925 for a family of three. States seeking to expand coverage to children through SCHIP must demonstrate compliance with the requirements for the expansion to be approved, while those already covering such children must comply within 12 months or face unspecified "corrective action."

This new directive could have a significant impact on California. The state is required to meet the new requirements as the state enrolls some individuals into SCHIP-funded programs with family income above 250 percent of the FPL. In addition, the requirements could pose a significant barrier to the plans of Governor Schwarzenegger and legislative leaders to further expand eligibility for public health insurance to children in families earning up to 300 percent of the FPL.

This paper outlines the new federal requirements and examines California's ability to comply. It does not address the complex legal questions regarding the federal government's discretion to require changes to California's program or to institute corrective action. The State of New York and four other states will pursue questions of federal authority in court,[1] especially in the absence of federal rule-making.[2] For purposes of this paper, it is assumed that the requirements will be implemented.

While the federal government has said that full compliance with each requirement is needed, it is unlikely that California will be able to meet that standard. If California cannot fully comply, the state will be have to consider whether to challenge the federal requirements, face the promised corrective action, or stop using SCHIP funds to cover Californians who are in families with incomes above 250 percent of the FPL.

California's SCHIP Spending and Application of the Directive

California has the largest SCHIP program in the nation, covering more than 1 million low-income, uninsured children and women and spending about 16 percent of all federal SCHIP funds. California uses its SCHIP funds to support other public insurance programs, including Medi-Cal and Access for Infants and Mothers (AIM). The directive applies to California because several SCHIP-funded programs offer coverage to several different populations with incomes above an effective income level of 250 percent of the FPL.

Healthy Families Program

Healthy Families is only open to children in families with incomes up to 250 percent of FPL, as defined by California on a "net income" basis. The CMS directive only considers gross income. The distinction is technical, but important. Gross income refers to the total family income, while net income in the context of a Healthy Families application refers to how much a family is considered to have made after specific deductions are applied. California's state plan allows a number of deductions to monthly income consistent with the rules governing Medi-Cal, including: earned income ($90 per working adult); child care (between $200 and $175 depending on age); and alimony, child support, and disabled dependent care ($175). MRMIB estimates that there are about 34,000 children enrolled in Healthy Families with incomes above 250 percent of the FPL.[3]

Access for Infants and Mothers

AIM covers pregnant women with incomes between 200 percent and 300 percent of the FPL. Babies born to AIM women, referred to as "AIM-linked babies," also have SCHIP-funded coverage until age 2. AIM covers about 8,400 women and approximately 15,000 infants. While the directive never specifically discusses adults, it could be interpreted to include pregnant women.

Healthy Kids Programs

California has an approved state plan amendment (SPA) that allows San Mateo, Santa Clara, and San Francisco to use federal SCHIP funds to pay for coverage provided to children in families with incomes between 250 percent and 300 percent of the FPL. There are now about 1,100 children enrolled in these programs. California also submitted an application to expand the SPA to Santa Cruz, but that application is on hold pending a request for information from CMS related to the August 17 directive.

Potential Healthy Families Program Expansions

California's broader health reform efforts rely heavily on SCHIP funding and the state's ability to make use of additional federal funding. Governor Schwarzenegger and the Democratic leaders in the state legislature put forth proposals calling for an expansion of the program to cover uninsured children in households with incomes up to 300 percent of the FPL, a population estimated to be as large as 100,000.[4]

Can California Comply?

The August 17 directive represents a major shift in CMS policy. The CMS letter does not go into sufficient detail for the ramifications of the directive to be fully understood, but it is possible to offer an initial analysis of California's ability to comply. This paper focuses on the eight new requirements specified in the letter, which are divided into three categories, namely, those where California is likely:

- In compliance already;
- Able to comply if the state wishes; and,
- Unable to comply in the near term.

California's program may already comply with the following requirements:

✓ *Requirement: "Monitoring and verifying health insurance status at the time of application," which must "include information regarding coverage provided by a non-custodial parent."*

Status: The Healthy Families application requires applicants to attest that the child has not had employer-based coverage for the last three months. It does not specifically ask about coverage that may have been provided by non-custodial parents.

Implementation: California would appear to be in compliance. The question about health insurance on the Healthy Families application is broad, and it is likely that coverage offered by a non-custodial parent is already being reported.

- ✓ *Requirement: "Preventing employers from changing dependent coverage policies that would favor a shift to public coverage."*

  Status: Section 12693.82 of the California Insurance Code makes it an unfair labor practice for employers to refer the children of employees to the Healthy Families program "for the purpose of separating that employee or employee's dependent from group health coverage provided in connection with the employee's employment." In addition, Section 12693.83 makes it an unfair labor practice "to change the employee-employer share-of-cost ratio based upon the employee's wage base or job classification or to make any modification of coverage for employees and employee's dependents," in order to drive dependent children to enroll in Healthy Families.

  Implementation: California would appear to be in compliance. Without additional federal guidance, it is unclear what more California could do on this point.

California could alter its programs to comply with the following requirements:

- ✓ *Requirement: Implement "a minimum one year period of uninsurance for individuals prior to receiving coverage."*

  Status*:* California now requires a waiting period of three months between employer-based coverage and enrollment in Healthy Families. The state's rules do not apply to children with prior individual coverage and allow some exceptions, such as death of a parent. The majority of states have waiting periods of fewer than six months, and the trend has been to shorten the wait between employer-based coverage and SCHIP eligibility.[5]

  Implementation: The waiting period would need to be increased fourfold, and would by definition require children to go without insurance for much longer intervals to remain eligible.

- ✓ *Requirement: "Verifying family insurance status through insurance databases."*

  Status*:* The Healthy Families program relies on private health plans to report if the child previously had employer-based coverage. For example, if private insurance companies inform the state a child was previously enrolled in group insurance within the three-month window or is dually enrolled under custodial and non-custodial parents, the state disenrolls that child from Healthy Families.

  Implementation: Increasing the use of private insurance databases to verify the insurance status of every Healthy Families applicant is possible, but would impose additional administrative costs on the state.

- ✓ *Requirement: "The cost sharing requirement under the state plan compared to the cost sharing required by competing private plans must not be more favorable to the public plan by more than 1 percent of the family income, unless the public plan's cost sharing is set at the 5 percent family cap." Also, states must impose "cost sharing in approximation to the cost of private coverage."*

Status: Cost sharing in Healthy Families is on average 1.8 percent of family income (for a family of three).[6] Monthly premiums range between $4 and $15 per child, depending on family income, with a monthly per-family cap of $45. Co-pays also apply. Costs are based on a family's ability to pay, not on cost sharing in the private market.

Implementation: Given the wide range of health insurance products available in California, it would be very difficult to calculate a 1 percent difference as called for in the new requirement. The definition of a "competing private plan" is not offered by CMS, raising questions about how to implement the requirement.

If California is required to maximize a family's contribution to meet the federal 5 percent of income cap, the state would charge far higher premiums and copayments. A family earning $50,000 a year would be charged $208 a month, regardless of the number of children — an amount almost 14 times greater than the highest per-child premium rate charged by Healthy Families today.

- ✓ *Requirement: "Assurance that the state is current with all reporting requirements in SCHIP and Medicaid and reports on a monthly basis data relating to the crowd-out requirements."*

Status: California is up-to-date on all existing reporting requirements.

Implementation: California likely could generate monthly updates on how the state is complying with the new CMS requirements. However, this would increase administrative cost and complexity. Moreover, the difficult challenge of measuring "crowd out" will add to this complexity.

California would have difficulty complying with the following requirements:

- ✓ *Requirement: Assuring "that the number of children in the target population insured through private employers has not decreased by more than two percentage points over the prior five year period."*

Status: California, like the United States overall, is experiencing an erosion in employer-based coverage. While "target population" is not defined in the CMS letter, the rate of employment-based insurance for California children in families with incomes below 200 percent of the FPL fell from 28.5 percent in 2001 to 18.3 percent in 2005.[8] For all California children over the same period, the rate of employment-based insurance for those in families earning more than 300 percent of the FPL fell 3.8 percent.

Implementation: Given the lack of an accepted data standard, it is unclear on what basis California might offer the required assurance beyond simply asserting its compliance. The prospect for state health reform also clouds the picture. While the legislative debate in Sacramento includes a possible requirement that employers offer insurance, some may choose to pay a penalty instead, leaving the overall rate of employer-based coverage unchanged.

- ✓ *Requirement: Assuring "that the state has enrolled at least 95 percent of the children in the state below 200 percent of the FPL who are eligible for either SCHIP or Medicaid (including a description of the steps the state takes to enroll these eligible children)."*

  Status*:* It is difficult to assess California's current status because different data sources can yield different results. Data from the Urban Institute's TRIM model suggests that California, like many states, can reach the CMS benchmark. But this data also shows that California has 135 percent of the children eligible for Medi-Cal and Healthy Families enrolled. CHIS data indicates that California does not meet the CMS threshold, with about 88 percent of all Medi-Cal- and Healthy Families-eligible children enrolled in the program.[9]

  Implementation: The key question for California turns on what data the federal government will use to make this calculation. While expanding efforts to identify and encourage enrollment may help reduce the number of eligible and uninsured children, it is not clear that the 95 percent level is feasible.

Conclusion

The new CMS requirements as outlined in their August 17 letter represent a major shift in CMS policy. While California can meet some of the requirements, full compliance does not appear likely or possible. Since the federal government is seeking full compliance, the state could face federal penalties for covering some children in families earning incomes above 250 percent of the FPL and may be prevented from expanding eligibility for Healthy Families. The changes would result in higher administrative costs and children going without insurance for longer periods before becoming eligible for Healthy Families coverage.

Endnotes

[1] Joan Gralla, "Five states to sue over child health plan," Reuters, September 30, 2007. California will file an amicus brief in the case on behalf of those suing the federal government.
[2] The items in the CMS letter are requirements for which CMS states it has statutory authority. CMS has not begun a rule-making process that would result in formal rules that would carry more legal weight.
[3] Author conversation with Managed Risk Medical Insurance Board staff.
[4] Peter Harbage et al, *Funding California's SCHIP Coverage: What will it Cost?* California HealthCare Foundation, May 2007.
[5] Lutzky Westpfahl, Amy, and Ian Hill, *Has the Jury Reached a Verdict? States Early Experiences with Crowd Out Under SCHIP*, Urban Institute, June 2001.
[6] Author conversation with Managed Risk Medical Insurance Board staff.